

BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:

QUEST ENVIRONMENTAL
155 Arovista Circle
Brea, CA 92821

Employer

Docket No. 01-R3D1-2955

**DENIAL OF PETITION
FOR RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code hereby denies the petition for reconsideration filed in the above entitled matter by Quest Environmental (Employer).

JURISDICTION

From August 24, 2000 through February 22, 2001, a representative of the Division of Occupational Safety and Health (the Division) conducted an accident investigation at a place of employment maintained by Employer at 3333 Bristol Street, Costa Mesa, California (the site).

On February 22, 2001, the Division issued a citation to Employer alleging a serious violation of section 3329(d) [pipe lines] of the occupational safety and health standards and orders found in Title 8, California Code of Regulations.¹ The Division proposed a civil penalty of \$14,400 for the violation.

Employer filed a timely appeal contesting the classification of the violation and the reasonableness of the proposed civil penalty.

On January 10, 2003, in Anaheim, California a hearing was held before Barbara J. Ferguson, Administrative Law Judge (ALJ) of the Board. Steven Walgren, General Manager, represented Employer. Thurman Johns, Compliance Officer, represented the Division.

At the commencement of the hearing the parties stipulated to the following facts:

¹ Unless otherwise specified all references are to sections of Title 8, California Code of Regulations.

On August 23, 2000, three demolition laborers employed by Quest Environmental, Mr. Torre-Blanca, Mr. Segura-Diaz, and Mr. Magana, were injured while working at Robinsons-May at South Coast Plaza in Costa Mesa. The accident occurred when Mr. Torre-Blanca cut into a pressurized hydraulic line while using a cutting torch. Mr. Torre-Blanca was hospitalized for several weeks with third degree burns.

On April 7, 2003, the ALJ issued a decision denying Employer's appeal. The ALJ found that Employer did not exercise reasonable diligence in determining whether the hydraulic lines had been drained before commencing the demolition work and sustained the serious, accident-related classification of the violation. The penalty of \$14,400 was deemed reasonable and assessed against Employer.

Employer filed an unverified petition for reconsideration on May 15, 2003. The Division did not file an answer.

**REASON FOR DENIAL
OF
PETITION FOR RECONSIDERATION**

Labor Code section 6617 sets forth five grounds upon which a petition for reconsideration may be based:

- (a) That by such order or decision made and filed by the appeals board or hearing officer, the appeals board acted without or in excess of its powers.
- (b) That the order or decision was procured by fraud.
- (c) That the evidence does not justify the findings of fact.
- (d) That the petitioner has discovered new evidence material to him, which he could not, with reasonable diligence, have discovered and produced at the hearing.
- (e) That the findings of fact do not support the order or decision.

Employer petitions for reconsideration alleging the following grounds:

We find the Administrative Law Judge's (ALJ) decision on the above mentioned case to be unjust. The decision of the ALJ acted without or in excess of its powers. Evidence that was presented at an informal meeting with OSHA in addition to a July 11th, 2002 letter to the Appeals Board prior to the hearing should have been allowed. This evidence specifically demonstrated that injured employees were given specific instructions not to use the torch for

cutting elevator hydraulic system lines. This new information will confirm an independent employee act.

In addition the Summary of Evidence does not reflect or represent the facts that were presented at the hearing. Specifically “Blevins told Johns that he was aware that work had stopped for the purpose of draining the hydraulic fluid from the elevator lines” is false. There are many more statements in this decision that do not represent facts that were presented at the hearing.

In this case, we agree with the ALJ that the documentary evidence referenced above which was submitted by Employer at the hearing and attached to its petition for reconsideration did not meet basic foundational requirements. We do not know from the exhibit, which is entitled “Employee Sign In Sheet,” who gave the training, what the extent of the training was, whether or not the workers understood English, whether there had been any previous training or any number of other foundational questions and/or answers that would assist the ALJ. In addition, even if the document were allowed into evidence, the evidence submitted falls well short of establishing the Independent Employee Act Defense. Indeed, the brevity of the document and the manner in which it was presented would lead a reasonable ALJ to conclude that this employer presented its employee with no or minimal training and did not have a well devised training program in place.

Additionally, Labor Code section 6616 provides that:

The petition for reconsideration shall set forth specifically and in full detail the grounds upon which the petitioner considers the final order or decision made and filed by the appeals board or a hearing officer to be unjust or unlawful, and every issue to be considered by the appeals board.

These requirements are mandatory. *Louis G. Beary Plastering*, Cal/OSHA App. 76-1296, Denial of Petition for Reconsideration (Nov. 14, 1977). The Board has consistently rejected petitions that do not contain sufficient detail. (See. e.g., *Lusardi Construction Company*, Cal/OSHA App. 86-318, Denial of Petition for Reconsideration (Oct. 29, 1986); *Paterson Pacific Parchment Co.*, Cal/OSHA App. 80-1238, Denial of Petition for Reconsideration (Apr. 22, 1981).) Employer’s petition fails to meet the statutory requirements. Simply alleging that a sentence in the evidence portion of the ALJ’s decision is false without specific reference to the record and alleging that other statements of

fact are not representative of the evidence presented at the hearing is insufficient.²

In addition, our review of the record reflects that the ALJ's decision is properly based upon the most logical inferences to be drawn from the evidence and the ALJ's findings are adopted by the Board.

DECISION

Employer's petition for reconsideration is denied. The Board affirms the ALJ's decision finding a serious violation of section 3329(d) and assessing a civil penalty of \$14,400.

MARCY V. SAUNDERS, Member
GERALD PAYTON O'HARA, Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: July 1, 2003

² Under Board regulation, a petition for reconsideration will be denied if it contains no more than allegations of grounds for reconsideration unsupported by specific references to the record and principles of law involved. (§391)